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HOUSE BILL 357

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE LEAD-BASED PAINT
MANAGEMENT ACT; PROVIDING ADDITIONAL POWERS OF THE
ENVIRONMENTAL IMPROVEMENT BOARD, THE DEPARTMENT OF ENVIRONMENT
AND THE SECRETARY OF ENVIRONMENT; PROVIDING FOR CERTIFICATION
AND ACCREDITATION OF CERTAIN LEAD-BASED PAINT PROFESSIONALS;
PROVIDING FOR RECIPROCITY WITH OTHER STATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Lead-Based Paint Management Act".

Section 2. DEFINITIONS.--As used in the Lead-Based Paint
Management Act:

A. "abatement" means any set of measures designed
to permanently eliminate lead-based paint hazards in accordance
with standards established by the board, including:

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1 (1) the removal of lead-based paint and lead-
2 contaminated dust, the permanent containment or encapsulation
3 of lead-based paint, the replacement of lead-painted surfaces
4 or fixtures or the removal or covering of lead-contaminated
5 soil; and

6 (2) preparation, cleanup and disposal measures
7 and post-abatement clearance testing activities associated with
8 such measures;

9 B. "board" means the environmental improvement
10 board;

11 C. "certified lead-based paint contractor" means
12 any individual who is certified by the department as a lead-
13 based paint reduction contractor, inspector or hazard
14 evaluator;

15 D. "certified lead-based paint specialist" means a
16 lead-based paint specialist certified by the department;

17 E. "child-occupied facility" means a building or
18 portion of a building constructed prior to 1978, which is
19 visited by a child, six years of age or younger for at least
20 three hours in one day on two or more days in the same week,
21 when the combined visiting time for that child totals six or
22 more hours in one week and at least sixty hours in one year.
23 The designated weekly period for this calculation begins on
24 Sunday and ends on Saturday. The term "child-occupied
25 facility" includes daycare centers, preschools and kindergarten

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1 classrooms;

2 F. "department" means the department of
3 environment;

4 G. "federally assisted housing" means residential
5 dwellings receiving project-based assistance pursuant to
6 federal programs, including:

7 (1) Section 221(d)(3) or 236 of the National
8 Housing Act;

9 (2) Section 1 of the Housing and Urban
10 Development Act of 1965;

11 (3) Section 8 of the United States Housing Act
12 of 1937; or

13 (4) Sections 502(a), 504, 514, 515, 516 and
14 533 of the Housing Act of 1949;

15 H. "federally owned housing" means residential
16 dwellings owned or managed by a federal agency or for which a
17 federal agency is a trustee or conservator;

18 I. "hazard evaluation" means an on-site
19 investigation process established by the rules of the board to
20 determine and report the existence, nature, severity and
21 location of lead-based paint hazards in residential dwellings,
22 and "hazard evaluation" is synonymous with the term "risk
23 assessment" as used in Title X of the Residential Lead-Based
24 Paint Hazard Reduction Act of 1992;

25 J. "lead-based paint" means paint or other surface

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1 coatings that contain lead in excess of one milligram per one
2 square centimeter, or one-half percent by weight, or:

3 (1) in the case of paint or other surface
4 coatings in target housing, a lower level that is established
5 by the United States secretary of housing and urban
6 development, as defined in Section 302(c) of the federal Lead-
7 Based Paint Poisoning Prevention Act; or

8 (2) in the case of any other paint or surface
9 coatings, any other level established by the board;

10 K. "lead-based paint contractor" means any
11 individual or business that performs or supervises or offers to
12 perform or supervise lead-based paint services;

13 L. "lead-based paint hazard" means any condition
14 that causes exposure to lead from lead-contaminated dust, lead-
15 contaminated soil or lead-contaminated paint that is
16 deteriorated or present in accessible surfaces, friction
17 surfaces or impact surfaces that would result in adverse human
18 health effects as established by the board;

19 M. "lead-based paint hazard evaluator" means an
20 individual certified by the department to perform lead-based
21 paint hazard evaluations;

22 N. "lead-based paint inspector" means an individual
23 certified by the department to perform a surface-by-surface
24 investigation to determine the presence of lead-based paint and
25 provide a report explaining the results of the investigation;

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1 O. "lead-based paint reduction contractor" means
2 any individual or business that performs or supervises lead-
3 based paint services;

4 P. "lead-based paint services" means lead-based
5 paint hazard evaluation, inspection, detection, reduction,
6 renovation or remodeling or de-leading and abatement of lead
7 sources or lead-based paint, lead-based paint hazards, lead-
8 contaminated dust or lead-contaminated soil and demolition of
9 structures or facilities with lead-based paint hazards, except
10 in the case of any public building constructed before 1978, and
11 for any other commercial building, bridge or other structure,
12 "lead-based paint services" means identification of lead-based
13 paint or materials containing lead-based paint, and de-leading
14 and abatement of lead from bridges and demolition of structures
15 or facilities with lead-based paint hazards;

16 Q. "lead-based paint specialist" means any worker
17 or other person who is directly and substantially involved in
18 the performance of lead-based paint services and who has
19 satisfactorily completed the required level of lead-based paint
20 training from state accredited training providers and programs,
21 or in the case of out-of-state providers and programs, from
22 department-recognized and -approved providers and programs, and
23 "lead-based paint specialist" is synonymous with the term
24 "abatement worker" or "worker" as used in Title X of the
25 Residential Lead-Based Paint Hazard Reduction Act of 1992;

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1 R. "reduction" means measures designed to reduce or
2 eliminate human exposure to lead-based paint hazards through
3 various methods, including interim controls and abatement;

4 S. "residential dwelling" means:

5 (1) a single-family dwelling, including
6 attached structures such as porches and stoops; or

7 (2) a single-family dwelling unit in a
8 structure that contains more than one separate residential
9 dwelling unit and in which each such unit is used or occupied
10 or intended to be used or occupied as the home or residence of
11 one or more persons;

12 T. "secretary" means the secretary of environment;
13 and

14 U. "target housing" means any housing constructed
15 prior to 1978. In the case of jurisdictions that banned the
16 sale or use of lead-based paint prior to 1978, the United
17 States secretary of housing and urban development, at the
18 secretary's discretion, may designate an earlier date.

19 Section 3. BOARD POWERS AND DUTIES. --The board shall:

20 A. adopt rules that are consistent with and no more
21 restrictive than the federal Residential Lead-Based Paint
22 Hazard Reduction Act of 1992 and rules adopted pursuant to that
23 act, including rules that:

24 (1) establish a program of certification of
25 lead-based paint contractors, including qualifications and

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1 training requirements;

2 (2) require certification of any lead-based
3 paint reduction contractor or lead-based paint inspector,
4 hazard evaluator or specialist performing or offering to
5 perform lead-based paint services on target housing and child-
6 occupied facilities prior to the performance of any of those
7 services;

8 (3) provide for accreditation of approved
9 training programs located in this state;

10 (4) contain standards for performing lead-
11 based paint services, including reliability, effectiveness and
12 safety;

13 (5) require that all lead-based paint training
14 programs shall include a hands-on component and instruction on
15 the health effects of lead exposure, the use of personal
16 protective equipment, workplace hazards and safety problems,
17 reduction and abatement methods and work practices,
18 decontamination procedures, cleanup and waste disposal
19 procedures, lead monitoring and on-site testing methods and
20 legal rights and responsibilities; and

21 (6) identify guidelines, based on federal
22 regulations, for the determination of adverse human health
23 effects posed by lead-based paint hazards;

24 B. exempt railroad bridges owned or leased by a
25 railroad from the rules;

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1 C. establish fees, based on the cost of services,
2 for:

3 (1) certification of lead-based paint
4 contractors and specialists;

5 (2) accreditation of approved training
6 programs and training providers;

7 (3) recognition and approval of out-of-state
8 accredited training programs and training providers; and

9 (4) any training or other program related to
10 lead-based paint services conducted by the department and for
11 services rendered by the department in connection with the
12 certification, accreditation, recognition and approval; and

13 D. exempt a person from the certification fees if
14 the person files an affidavit with the department stating that
15 the applicant is employed by the state or a political
16 subdivision and shall only be performing lead-based paint
17 services for the state or political subdivision employer.

18 Section 4. DEPARTMENT POWERS AND DUTIES. -- The department
19 shall:

20 A. cooperate with and implement the state lead-
21 based paint reduction and regulation program under the
22 jurisdiction of the federal environmental protection agency;

23 B. issue, renew, reactivate, reinstate, modify,
24 suspend, revoke or deny certification pursuant to the Lead-
25 Based Paint Management Act;

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1 C. cooperate with others in facilitating the
2 development of educational and training programs, examinations
3 and community outreach materials;

4 D. establish criteria for certification pursuant to
5 the Lead-Based Paint Management Act and provide for the
6 confidentiality of examinations and individual scores;

7 E. issue, renew, reinstate, modify, suspend, revoke
8 or deny accreditation to lead-based paint training programs and
9 the providers of such programs, and recognize and approve out-
10 of-state training programs and providers;

11 F. enforce the provisions of the Lead-Based Paint
12 Management Act and rules, orders, accreditations and
13 certifications issued pursuant to that act;

14 G. collect and analyze samples to determine the
15 presence and condition of lead-based paint as necessary for the
16 enforcement of the Lead-Based Paint Management Act;

17 H. convene and coordinate an interagency task force
18 that shall meet on a regular basis to exchange information
19 regarding lead-poisoning prevention and lead-based paint hazard
20 control matters;

21 I. establish liaisons with other states that have
22 lead-based paint contractor and lead-based paint specialist
23 certification programs to assure consistency of program
24 requirements in order to facilitate reciprocity of
25 certification and accreditation among the several states;

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1 J. enter into contracts and agreements necessary or
2 incidental to the performance of the department's duties and
3 the execution of its powers pursuant to the Lead-Based Paint
4 Management Act, including contracts with the United States,
5 other states and New Mexico state agencies and political
6 subdivisions;

7 K. accept grants from the United States government
8 and any other source and comply with conditions for the grants;
9 and

10 L. exercise all incidental powers necessary to
11 implement the Lead-Based Paint Management Act and rules adopted
12 pursuant to that act.

13 Section 5. CERTIFICATION--WAIVER--RENEWAL.--

14 A. The department shall certify an applicant who
15 has paid the required nonrefundable certification fees and has
16 complied with the requirements for certification pursuant to
17 the Lead-Based Paint Management Act.

18 B. The department may waive some or all of its
19 testing, training, experience or examination requirements for
20 certification if the applicant presents a currently valid
21 certificate or license issued by another state or certifying
22 agency or institution or national nonprofit organization for
23 lead-based paint services if the department finds that the
24 certification requirements of the issuer in effect at the time
25 of issuance are equivalent to its certification requirements;

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1 provided, however, that no certificate shall be issued under
2 this subsection unless the holder of the certificate would be
3 issued a similar certificate or license by another state,
4 certifying agency or organization under substantially the same
5 conditions.

6 C. A certificate issued under this section shall be
7 renewed by the April 1 occurring not more than one year after
8 the date of the most recent date of issuance, renewal,
9 reactivation or reinstatement. Thereafter, the certificate may
10 be renewed for a one-year period beginning April 1 and ending
11 March 31 of the following year.

12 D. A certificate shall be renewed upon approval of
13 the department. Application for the renewal shall be submitted
14 to the department on forms prescribed by the department, shall
15 be accompanied by a nonrefundable renewal fee as set by the
16 board and shall include documentation that the applicant has
17 met the annual renewal requirements of the department. The
18 department shall allow a thirty-day grace period for annual
19 renewals without payment of late fees if the applicant submits
20 the required renewal fee and qualifies for renewal.

21 E. A certificate that is not so renewed shall
22 expire on April 30 after the thirty-day grace period and shall
23 have no further validity unless the department, upon receipt of
24 an application from the holder of the expired certificate
25 within one year after the certificate's March 31 renewal date,

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1 reactivates and renews the certificate. The reactivation and
2 renewal application shall include the submission of data on
3 forms prescribed by the department, nonrefundable renewal and
4 reactivation late fees as set by the board and documentation
5 that the applicant has met the department's renewal
6 requirements. A reactivated certificate may be renewed
7 annually as provided in this section.

8 F. The holder of an expired certificate that is not
9 renewed shall not be issued a new certificate unless the holder
10 applies and qualifies pursuant to the Lead-Based Paint
11 Management Act and rules adopted pursuant to that act.

12 G. The department may condition a certificate as it
13 deems necessary.

14 H. A certificate shall not be issued pursuant to
15 the provisions of the Lead-Based Paint Management Act to any
16 entity other than an individual or business.

17 Section 6. CONTRACTORS ON PUBLIC PROJECTS REQUIRED TO BE
18 CERTIFIED--ADVERTISEMENTS BY CONTRACTORS--USE OF ACCREDITED OR
19 CERTIFIED LABS--OFFICIAL CERTIFICATION LIST--HEALTH AND SAFETY
20 INFORMATION.--

21 A. A lead-based paint contractor shall not perform
22 or offer to perform lead-based paint services upon any target
23 housing or child-occupied facilities unless the contractor is
24 certified by the department prior to performing or offering to
25 perform such services.

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1 B. An individual shall not advertise or otherwise
2 present himself as a certified lead-based paint contractor or
3 specialist for purposes of offering to perform or performing
4 lead-based paint services unless certified by the department.

5 C. Certified lead-based paint contractors and
6 specialists shall use only environmental sampling laboratories
7 that are part of an effective voluntary accreditation program
8 as determined by the federal environmental protection agency or
9 that are federally certified to analyze for lead in paint,
10 films, soil and dust.

11 D. The department shall maintain an official
12 listing of the names and addresses of all certified lead-based
13 paint contractors and specialists and make the list available
14 to any person requesting it upon payment of a copying fee
15 established by the board.

16 E. The department of labor shall provide health and
17 safety information on abatement to all certified lead-based
18 paint contractors and specialists.

19 Section 7. TRAINING PROGRAMS AND PROVIDERS. --

20 A. A training provider shall not advertise or
21 otherwise present itself as offering an accredited lead-based
22 paint training program unless accredited by the department.

23 B. The department may condition an accreditation as
24 it deems necessary.

25 C. Any program or training provider accreditation

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1 shall be renewable annually for the period September 1 through
2 August 31 pursuant to rules promulgated by the board.

3 D. The department may approve in part or in whole
4 the current accreditation of an out-of-state training program
5 or training provider if the department finds that the state's
6 accreditation requirements in effect at the time of
7 accreditation are equivalent to the requirements of the
8 department.

9 Section 8. DENIAL, REVOCATION OR SUSPENSION OF
10 CERTIFICATION OR ACCREDITATION. --

11 A. The department shall deny, revoke or suspend a
12 certificate or accreditation, subject to appeal pursuant to
13 board rules, for:

- 14 (1) gross inefficiency or incompetence;
15 (2) violation of any provisions of the Lead-
16 Based Paint Management Act or rules adopted pursuant to that
17 act or any terms or conditions of a certification,
18 accreditation or order issued pursuant to that act; or
19 (3) fraud or misrepresentation in obtaining a
20 certificate or accreditation.

21 B. If the department denies, suspends or revokes a
22 certificate or accreditation, the applicant may, after one
23 year, apply for a new or a reinstatement of the certification
24 or accreditation.

25 C. The department may withdraw in part or in whole

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1 its recognition and approval of any out-of-state training
2 program or training provider at any time the program or
3 provider does not qualify.

4 Section 9. LEAD-BASED PAINT PUBLIC INFORMATION PROGRAM --

5 A. Consistent with the terms of federal funding
6 agreements and the receipt of the funds by the department for
7 information programs, the secretary shall institute an
8 education and public information program in order to inform the
9 general public, parents of children residing in areas of
10 significant exposure to sources of lead-based paint hazards,
11 teachers, social workers and other human services personnel,
12 owners of residential property and health services personnel at
13 hospitals of the dangers, frequency and sources of lead-based
14 paint hazards and the methods of preventing such hazards.

15 B. The department, after notice and opportunity for
16 comment, shall publish and update a lead-based paint hazard
17 information pamphlet to be used in connection with the Lead-
18 Based Paint Management Act and Section 1018 of the federal
19 Residential Lead-Based Paint Hazard Reduction Act of 1992. The
20 pamphlet shall:

21 (1) contain information regarding the health
22 risks associated with exposure to lead;

23 (2) provide information on the presence of
24 lead-based paint hazards in federally assisted, federally owned
25 and target housing;

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1 (3) describe the risk of lead exposure for
2 children under six years of age, pregnant women, women of
3 childbearing age, persons with respiratory disease or
4 disabilities, persons involved in home renovation and others
5 residing in a residential dwelling with lead-based paint
6 hazards;

7 (4) describe the risks of renovation in a
8 dwelling with lead-based paint hazards;

9 (5) provide information on approved methods
10 for evaluating and reducing lead-based paint hazards and their
11 effectiveness in identifying, reducing, eliminating or
12 preventing exposure to lead-based paint hazards;

13 (6) advise persons how to obtain a list of
14 certified lead-based paint contractors;

15 (7) state that a lead-based paint hazard
16 evaluation or on-site inspection for lead-based paint is
17 recommended prior to the purchase, lease or renovation of
18 target housing;

19 (8) state that certain state and local laws
20 may impose additional requirements related to lead-based paint
21 in housing and provide a listing of federal, state and local
22 agencies in each state, including addresses and telephone
23 numbers, that can provide information about applicable laws and
24 available government and private assistance and financing; and

25 (9) provide any other information about

1 environmental hazards associated with residential real property
2 as the department deems appropriate.

3 Section 10. RENOVATION, DEMOLITION AND REMODELING--
4 GUIDELINES.--The board shall adopt guidelines for renovation,
5 demolition and remodeling activities that may create a risk of
6 exposure to dangerous levels of lead. The department shall
7 disseminate such guidelines to persons engaged in renovation,
8 demolition and remodeling through hardware and paint stores,
9 employee organizations, trade groups, state and local agencies
10 and through other appropriate means.

11 Section 11. EMPLOYMENT CONTINGENT UPON FEDERAL FUNDS.--
12 Any full-time-equivalent employees of the department pursuant
13 to the Lead-Based Paint Management Act that are to be
14 compensated with federal funds shall be employed contingent
15 upon the procurement of federal funds and shall be terminated
16 when federal support of those positions is discontinued. All
17 activities performed by these employees shall be discontinued
18 upon their termination due to the lack of federal funds.